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No. 01-758

In the Supreme Court of the United States

UNITED PARCEL SERVICE, INC., PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

LAWRENCE G. WALLACE
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

NICHOLAS M. INZEO
Acting Deputy General Counsel
PHILIP B. SKLOVER
Associate General Counsel
LORRAINE C. DAVIS
Assistant General Counsel
JENNIFER S. GOLDSTEIN
Attorney
Equal Employment Opportunity Commission
Washington, D.C. 20507

1182

QUESTION PRESENTED

Whether the court of appeals correctly held that genuine issues of material fact exist with respect to whether an individual with a severe allergy specific to one region of the country was disabled for purposes of the Americans with Disabilities Act of 1990.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 249 F.3d 557. The opinion of the district court (Pet. App. 13a-23a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 7, 2001. A petition for rehearing was denied on July 31, 2001 (Pet. App. 24a-25a). The petition for a writ of certiorari was filed on October 29, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

STATEMENT

1. From January 1984 until October 1994, William Woods was employed as a driver for petitioner United

Parcel Service (UPS) in Austin, Texas. In 1988, Woods developed an allergy to the pollen of a plant, mountain cedar, that is specific to the Southwest. The allergy became progressively worse and, by 1994, was quite severe. According to Woods, his nose was constantly running and congested, his chest was congested, his eyes were swollen, he had fever blisters and rashes all over his body, and he had difficulty breathing, eating, and sleeping. None of the medications prescribed by Woods's doctor alleviated his symptoms. The only treatment that remained—other than medication that would make him too drowsy to drive safely—was relocation to another region. Pet. App. 4a-6a.

In March 1994, Woods informed UPS officials in Texas that he suffered from a severe allergy specific to that region and requested a transfer to northern Kentucky, where he had lived previously and had not suffered from allergies. He attached a letter from his doctor supporting his request. Pet. App. 5a.

In April 1994, a UPS official in Texas informed Woods that company policy precluded a transfer, but that he could resign his position in Texas and be rehired in Ohio or Kentucky. Woods then met with a UPS official in Cincinnati, who similarly advised Woods that he could not be transferred to Ohio, but could quit his job in Texas and reapply as a new hire in Ohio, sacrificing any accumulated seniority under the collective bargaining agreement. That official refused to accept an application from Woods while he was still employed by UPS in Texas. Pet. App. 5a-6a, 7a.

In October 1994, Woods resigned his position with UPS in Texas and moved to northern Kentucky. He submitted an application to UPS in Cincinnati, along with letters of recommendation from UPS officials in Texas. He was told by a UPS official in Cincinnati that

he would not be hired because of the company's policy against rehiring former employees. Pet. App. 6a.

In April 1995, Woods filed a charge with the Equal Employment Opportunity Commission (EEOC) based on the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* Pet. App. 3a.

2. The EEOC subsequently filed suit against UPS under the ADA, alleging that UPS had failed to provide Woods with a reasonable accommodation for his disability and to extend to Woods the same terms, conditions, and privileges of employment that it extends to other employees. With respect to whether Woods was an "individual with a disability" for purposes of the ADA, the EEOC alleged that Woods had a physical impairment, a severe allergy, that substantially limited one or more major life activities, specifically including breathing. Am. Compl. para. 9; see 42 U.S.C. 12102(2)(A) (defining a "disability" as, *inter alia*, "a physical or mental impairment that substantially limits one or more * * * major life activities").

a. UPS moved for summary judgment. UPS contended that, as a matter of law, Woods was not disabled. UPS argued that Woods's allergy symptoms were mitigated by medication. In addition, UPS argued that Woods's performance of a physically demanding job, which included lifting, carrying, and moving heavy packages, and his physical activity outside work established that he was not substantially limited in breathing. UPS Summ. J. Br. 19; see UPS Summ. J. Reply Br. 2 (arguing that Woods's work performance "constitutes an irrefutable demonstration that Woods was not substantially limited in any major life activity at or away from work").

In response, the EEOC submitted evidence that Woods's allergy significantly limited his ability to

breathe. The evidence showed that Woods's nose and chest were constantly congested during the workweek, when he was exposed to wind-blown pollen through the open doors of his UPS truck. When he was not at work, he generally stayed in his house, where filters minimized the pollen in the air. Even at home, however, his nose and chest were so congested that he could sleep only in positions that allowed them to drain. The evidence also showed that he tried various medications—antihistamines, decongestants, nasal and injectable steroids, and allergy injections—but found none to be effective in relieving his symptoms. EEOC Summ. J. Br. 7-11, 13, 22.

In addition, the EEOC argued that Woods's allergy substantially limited major life activities in addition to breathing. Specifically, the EEOC explained that the symptoms of Woods's allergy—such as fever, rashes, nausea, facial swelling, and difficulties in eating and concentrating—impaired his ability to care for himself and to sleep. The EEOC argued that Woods's allergy also substantially limited his ability to engage in the major life activities of intimate relations with his wife and social interaction with others. EEOC Summ. J. Br. 9, 22-23.

b. The district court granted UPS's motion for summary judgment. Pet. App. 13a-23a. The court construed the complaint as setting forth two distinct claims: (1) a claim that UPS failed to accommodate Woods's disability by denying his request for a transfer, and (2) a claim that UPS discriminated against Woods by failing to rehire him. *Id.* at 19a.

The district court dismissed the first claim as time-barred. The court reasoned that the statute of limitations began to run on that claim by April 1994 after UPS denied Woods's request for a transfer. Accord-

ingly, because Woods did not file a charge with the EEOC within 300 days of that date, the court held the claim to be untimely. Pet. App. 19a-20a. The court did not address whether Woods had a disability when he worked for UPS in Texas.

The district court dismissed the second claim on the ground that Woods could not establish that UPS's decision not to rehire him was motivated by a disability. The court concluded that Woods was no longer disabled after he moved to Kentucky and applied to be rehired by UPS. The court further concluded that there was no evidence that the particular UPS official who declined to rehire Woods was aware of any record of disability. Pet. App. 20a-23a.

3. The court of appeals reversed. Pet. App. 1a-12a.

The court of appeals held at the outset that Woods had filed a timely charge of discrimination with respect to UPS's entire course of conduct. Pet. App. 7a-8a. The court explained that, "[c]ontrary to the district court's characterization, there were not two separate adverse actions, but rather an ongoing process that ended when Woods found himself without a job in November 1994." *Id.* at 8a. Until that time, the court concluded, Woods had reason to believe that UPS would accommodate his disability by rehiring him in Ohio. *Ibid.* The court noted that Woods filed a charge with the EEOC within the requisite 300 days of that date. *Ibid.*

The court of appeals also held that a reasonable jury could find that the EEOC satisfied each of the elements of a prima facie case of employment discrimination under the ADA: (1) that the individual is disabled; (2) that the individual is otherwise qualified for a position with or without reasonable accommodation; and (3) that the individual suffered an adverse employment

action because of the disability. Pet. App. 8a-12a; see 42 U.S.C. 12112(a).

With respect to whether the EEOC presented sufficient evidence to avoid summary judgment on the first element, the court of appeals observed that a person is disabled under the ADA if he has a physical or mental impairment that substantially limits one or more major life activities, "including breathing and self-care." Pet. App. 9a (citing 29 C.F.R. 1630.2(g)-(j)). The court noted that the EEOC maintained that Woods was disabled during his employment in Texas because his allergy impaired "his ability to breathe and to care for himself." *Ibid.* The court pointed to evidence in the record that supported that contention. *Ibid.*

The court of appeals rejected UPS's argument that Woods could not be disabled, as a matter of law, because "he was able to work his regular hours without accommodation while in Texas" and ceased to experience allergy symptoms after he moved to Kentucky. Pet. App. 9a. The court observed that "a reasonable jury could find that Woods was properly 'disabled' under the statute due to the substantial limitations his allergy placed on his ability to perform his job while in Texas, the place where he sought the accommodation of a relocation." *Id.* at 9a-10a.

ARGUMENT

The court of appeals correctly rejected UPS's contention that Woods was not disabled, as a matter of law, at the time of the events that gave rise to the EEOC's complaint in this case. The court's analysis does not break any new legal ground, turns on the particular facts of the case, and does not conflict with this Court's decision in *Toyota Motor Manufacturing, Kentucky, Inc.* v. *Williams*, No. 00-1089 (Jan. 8, 2002), or the

decision of any other circuit. Accordingly, the Court should neither grant plenary review in this case nor vacate the judgment below and remand for reconsideration in light of *Toyota*.

1. As the court of appeals recognized (Pet. App. 9a), an individual has a "disability," for purposes of the ADA, if he or she has "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. 12102(2)(A); see 42 U.S.C. 12102(2)(B) and (C) (defining "disability" as also including "a record of such an impairment" and "being regarded as having such an impairment"). The ADA does not itself define the term "major life activities." The ADA does, however, incorporate the regulations previously adopted by federal agencies under Title V of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 390 (29 U.S.C. 706(8)(B)). See 42 U.S.C. 12201(a); see also *Toyota*, slip op. 8-10; *Bragdon* v. *Abbott*, 524 U.S. 624, 631 (1998). Those regulations define "major life activities" as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 45 C.F.R. 84.3(j)(2)(ii) (1989).

UPS asserts (Pet. 8) that the court of appeals "determined that the record supported a finding that Woods was disabled, based solely on its conclusion that Woods had difficulty with *one particular* job," and that such a determination is contrary to "the ADA regulations and the case law of this Court and other courts of appeals." It is true that an impairment that substantially limits an individual *only* in the performance of one job does not amount to a disability under the ADA. The EEOC's regulations expressly provide as much. See 29 C.F.R. 1630.2(j)(3)(i) ("The inability to perform a single, particular job does not constitute a substantial

limitation in the major life activity of working.") (quoted in *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471, 493 (1999)). But we do not understand the court of appeals to have held that the EEOC made a sufficient showing of disability to withstand summary judgment based solely on Woods's difficulty in performing his job for UPS.

Here, as the court of appeals observed (Pet. App. 9a), the EEOC maintained that Woods's allergy substantially limited two of the major life activities enumerated in the regulations, breathing and caring for oneself.[1] The court then described (*ibid.*) the extensive evidence in the record that supports the EEOC's position, including evidence that Woods "suffered with severe nasal and bronchial congestion, swollen eyes and nose, rashes and fever blisters over large areas of his body, fatigue, fever, and depression," that Woods "rarely left home and spent nearly all of his non-working hours in bed," and that Woods relinquished "responsibility for his correspondence and household duties." See *id.* at 4a-5a (noting record evidence that Woods's symptoms were "quite severe and constant, including fever, swollen eyes, nasal congestion, fever blisters, rashes, lung congestion, fatigue, and depression, making it difficult

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[1] The EEOC also maintained that Woods's allergy substantially limited other major life activities that are not enumerated in the regulations, specifically including sleeping and personal interaction. See *Bragdon*, 524 U.S. at 639 (noting that the list of major life activities in the regulations is "illustrative, not exhaustive"); see also *McAlindin* v. *County of San Diego*, 192 F.3d 1226, 1234-1235 (9th Cir. 1999) (recognizing sleeping, engaging in intimate sexual relations, and interacting with others as major life activities), cert. denied, 530 U.S. 1243 (2000); *Pack* v. *Kmart Corp.*, 166 F.3d 1300, 1302 (10th Cir.) (recognizing sleeping to be a major life activity), cert. denied, 528 U.S. 811 (1999).

for him to breathe, eat, and sleep"). It is thus apparent that the court of appeals viewed the evidence of Woods's impairment as relating not exclusively (or even primarily) to limitations with respect to his job, but also to limitations with respect to virtually all aspects of his everyday life. Surely, if the court of appeals meant to reject the EEOC's position that Woods's impairment substantially limited major life activities, such as breathing and caring for oneself, that are performed at least as much outside as inside the workplace, the court would have said so.

UPS reads too much into the court of appeals' single sentence stating that "a reasonable jury could find that Woods was properly 'disabled' under the statute due to the substantial limitations his allergy placed on his ability to perform his job while in Texas." Pet. App. 9a-10a. That sentence appears to be directed at UPS's argument that Woods could not be disabled as a matter of law, because he performed his job without accommodation in Texas and ceased to experience allergy symptoms once he moved to Kentucky. The sentence recognizes that an individual still may have a disability, within the meaning of the ADA, although he can perform a given job "without reasonable accommodation." 42 U.S.C. 12111(8) (defining "qualified individual with a disability"). It also recognizes that Woods's move to Kentucky, incident to what he perceived to be UPS's response to his request for accommodation, does not disqualify him from ADA coverage with respect to that request. Contrary to UPS's assertions, the sentence is not reasonably understood, in context, as holding that Woods could be found to be disabled based solely on whether his impairment substantially limited his performance of a particular job, without regard to whether his impairment also substantially limited his

performance of the major life activities identified by the EEOC, such as breathing and caring for oneself. Rather, the court appears to have recognized simply that Woods's impairment substantially limited his performance of major life activities, such as breathing, at work as well as at home.[2]

2. In any event, even if the sentence on which UPS relies were an erroneous statement of the law, that would not be a sufficient reason to grant plenary review. Other decisions of the Sixth Circuit make clear, consistent with this Court's decisions and the EEOC's regulations, that an individual is not disabled under the ADA solely because he or she cannot perform a particular job. See, *e.g.*, *Swanson* v. *University of Cincinnati*, 268 F.3d 307, 317 (2001); *McKay* v. *Toyota Motor Mfg., U.S.A., Inc.*, 110 F.3d 369, 372-373 (1997); see also *Boerst* v. *General Mills Operations, Inc.*, No. 00-3281, 2002 WL 59637, at * 4 (Jan. 15, 2002). This Court does not grant certiorari simply to correct isolated statements in opinions or to resolve intra-circuit conflicts. See *Johnson* v. *De Grandy*, 512 U.S. 997, 1003 n.5

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[2] The court of appeals may have been unsure whether a disability must manifest itself inside as well as outside the workplace. No such requirement exists. See *Davidson* v. *Midelfort Clinic, Ltd.*, 133 F.3d 499, 508 (7th Cir. 1998) ("nowhere [in the ADA] do we find a requirement that limitations on * * * life activities [other than working]—walking, for example—be shown to manifest specifically in the workplace before the plaintiff may be accorded disabled status"); see also *Toyota*, slip op. 16 (rejecting the "idea that the question of whether an impairment constitutes a disability is to be answered only by analyzing the effect of the impairment in the workplace," because the ADA's definition of disability "is intended to cover individuals with disabling impairments regardless of whether the individuals have any connection to a workplace").

(1994); *Wisniewski* v. *United States*, 353 U.S. 901, 901-902 (1957) (per curiam).

Nor is there any reason to conclude that, even if this Court were to grant certiorari and correct the error asserted by UPS, the court of appeals' judgment ultimately would be altered. As noted, the EEOC presented extensive evidence that Woods's allergy significantly restricted his ability to engage in major life activities such as breathing and caring for himself, wholly aside from its effect on his job performance. See EEOC Summ. J. Br. 7-11 (describing evidence). That evidence is more than sufficient to defeat UPS's motion for summary judgment.

3. Finally, the Court should not, as UPS suggests (Pet. 11-14), grant the petition, vacate the court of appeals' judgment, and remand for further consideration in light of *Toyota*. This Court's decision in *Toyota* has no direct bearing on this case.

In *Toyota*, the Court addressed the standard for establishing a disability based on an impairment that substantially limits the major life activity of performing manual tasks. The Court reasoned that, "[i]n order for performing manual tasks to fit into th[e] category [of major life activities]—a category that includes such basic abilities as walking, seeing, and hearing—the manual tasks in question must be central to daily life," either individually or in combination. *Toyota*, slip op. 12. The Court therefore concluded that evidence that an impairment prevents an individual from performing "the manual tasks unique to [a] particular job" is ordinarily insufficient to establish a disability under the ADA. *Id.* at 16.

This case involves no claim that Woods was disabled based on an inability to perform manual tasks or to perform the specialized tasks, whether or not manual ones, unique to a particular job or category of jobs. Instead, the EEOC contends, with evidentiary support, that Woods was substantially limited in other major life activities that are not specific to the workplace, including breathing and caring for oneself. See EEOC Summ. J. Br. 21-23. Breathing is a "basic abilit[y]" of the same order as "walking, seeing, and hearing." *Toyota*, slip op. 12. Indeed, breathing is, if anything, a more essential life activity. Moreover, while caring for oneself may involve a variety of tasks, the evidence indicated that Woods was substantially limited in tasks "central to daily life," *ibid.*, such as eating, going outside, and managing his personal affairs. See EEOC Summ. J. Br. 22-23. Accordingly, nothing in *Toyota* casts doubt on the court of appeals' conclusion that the record contains sufficient evidence of Woods's disability to withstand summary judgment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

LAWRENCE G. WALLACE
Acting Solicitor General[*]

NICHOLAS M. INZEO
Acting Deputy General Counsel

PHILIP B. SKLOVER
Associate General Counsel

LORRAINE C. DAVIS
Assistant General Counsel

JENNIFER S. GOLDSTEIN
Attorney
Equal Employment Opportunity Commission

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[*] The Solicitor General is recused in this case.